

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MELVIN JONES, JR.,)	No. CV-F-05-148 OWW
)	
)	ORDER DENYING PLAINTIFF'S
Plaintiff,)	MOTION TO VACATE JUDGMENT
)	PURSUANT TO RULE 60(b) AS
vs.)	MOOT (Doc. 409) AND VACATING
)	ORAL ARGUMENT SET FOR MARCH
)	3, 2007
JOHN HOLLENBACK,)	
)	
)	
Defendant.)	
)	
)	

On January 15, 2008, Plaintiff filed a motion to vacate the judgment entered against him and in favor of Defendant pursuant to Rule 60(b)(3) and 60(b)(6), Federal Rules of Civil Procedure (Doc. 409). Plaintiff noticed the motion for hearing on March 3, 2008.

By email to Mr. Wainwright dated February 6, 2007 (forwarded to the Courtroom Deputy, Alice Timkin), Plaintiff stated that on February 11, 2008 "Plaintiff Jones will supplement and re-notice his pending Rule 60 motion set to be heard on 3/3/2008 as an independent action for fraud upon the court. [¶] Also, I will

1 present NO ARGUMENT, etc. as to the pending Rule 60 motion, and
2 will withdraw any request(s) that said Rule 60 motion be
3 considered on 2/11/2008. [¶] Hearing date for said re-noticed
4 Rule 60 motion will be set (re-set) for APRIL 28, 2008."

5 On February 7, 2008, Plaintiff filed "PLAINTIFF's request
6 for JUDICIAL NOTICE OF ATTACHMENT 'A' AND NOTICE OF REQUEST."
7 Plaintiff asserts that, at the February 11, 2008 hearing on
8 Defendant's motion for attorney's fees, he will request "to have
9 his pending motions (any/all) which relate to Defense
10 misconduct/FRAUD to BE TREATED as motions brought under Rule 60,
11 or in the alternative Jones withdraws (will on 2/11/2008) at oral
12 argument any/ALL Requests/Motions pertaining to/Related to
13 defense misconduct DUE to the FACT, Jones will File (on/about
14 2/12/2008) a complaint/ACTION FOR Independent Relief [See
15 Attachment 'A' affixed hereto - a true copy of said independent
16 ACTION]."

17 Given Plaintiff's representations, the motion to vacate the
18 judgment pursuant to Rule 60(b)(3) and 60(b)(6) is DENIED AS
19 MOOT.

20 Oral argument set for March 3, 2007 is VACATED.

21 IT IS SO ORDERED.

22 Dated: February 25, 2008

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE